

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

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In the Matter of LOU ELLEN CLOSE and DEPARTMENT OF AGRICULTURE,  
FOOD SAFETY & INSPECTION SERVICE, Branson, Mo.

*Docket No. 96-813; Submitted on the Record;  
Issued October 27, 1998*

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DECISION and ORDER

Before DAVID S. GERSON, MICHAEL E. GROOM,  
BRADLEY T. KNOTT

The issue is whether appellant has met her burden of proof to establish that she sustained an emotional condition in the performance of duty causally related to factors of her federal employment.

On November 1, 1995 appellant, then a 44-year-old food inspector, filed an occupational disease claim, alleging that she suffered from asthma attacks due to anxiety and job stress which she first realized was work related on October 20, 1995. Appellant stopped work on October 20, 1995 and returned to work on November 12, 1995. In a decision dated January 10, 1996, the Office of Workers' Compensation Programs denied appellant's claim on the grounds that the identified activities and employment factors did not occur within the performance of duty.

After a careful review of the record, the Board finds that appellant has not met her burden of proof to establish that she sustained an emotional condition while in the performance of duty.

An employee seeking benefits under the Federal Employees' Compensation Act has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed is causally related to the employment injury. These are the essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>1</sup>

Workers' compensation law is not applicable to each and every injury or illness that is somehow related to an employee's employment. There are distinctions as to the type of situation giving rise to an emotional condition which will be covered under the Act. Where disability results from an emotional reaction to regular or specially assigned work duties or a requirement

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<sup>1</sup> *Ruthie M. Evans*, 41 ECAB 416 (1990); *Joe D. Cameron*, 41 ECAB 153 (1989).

imposed by the employment, the disability comes within the coverage of the Act. On the other hand, the disability is not covered where it results from factors such as an employee's fear of a reduction-in-force or her frustration from not being permitted to work in a particular environment or to hold a particular position. Disabling conditions resulting from an employee's feeling of job insecurity or desire for a different job do not constitute personal injury sustained while in the performance of duty within the meaning of the Act.<sup>2</sup> When the evidence demonstrates feelings of job insecurity and nothing more, coverage will not be afforded because such feelings are not sufficient to constitute a personal injury sustained in the performance of duty within the meaning of the Act.<sup>3</sup> In these cases, the feelings are considered to be self-generated by the employee as they arise in situations not related to her assigned duties. However, where the evidence demonstrates that the employing establishment either erred or acted abusively in the administration of a personnel matter, any physical or emotional condition arising in reaction to such error or abuse cannot be considered self-generated by the employee but caused by the employing establishment.<sup>4</sup>

In the present case, appellant alleged that she developed asthma attacks causally related to anxiety and job stress in the performance of duty. As factors leading to her stress and anxiety, appellant indicated that her attacks became more frequent beginning July 1995 when she was sent on details to various locations that were further from her home and required additional driving. Appellant alleged that due to the increase in her attacks and the anxiety she was feeling on the job, she drove round trip to her details, as opposed to staying over night at a location, for fear that she might have an attack while no one was present to help. In a supplemental statement, appellant indicated that when she received her last assignment on October 19, 1995, it required her to drive 150 miles from her home and the date the detail started would have required her to reschedule a doctor's appointment for the second time or to work all night and go to the appointment without rest. She also indicated that she had been harassed by Dr. James Courtney, the area supervisor, about her requests for overtime to drive round trip and her per diems. Appellant's supervisor of October 19, 1995 confirmed that when appellant received her latest detail, she became emotionally upset, was not in any condition to work the rest of the day, was not in any condition to drive herself home and that her husband had to be called to take appellant home or to the doctor.

It is well settled that where the disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability comes within the coverage of the Act.<sup>5</sup> Moreover, when an employee experiences emotional stress in carrying out her employment duties, or has fear and anxiety regarding her ability to carry out her duties, and the medical evidence establishes that the disability resulted from her emotional reaction to such situation, the disability is generally regarded as due to an injury

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<sup>2</sup> *Lillian Cutler*, 28 ECAB 125 (1976).

<sup>3</sup> *Artice Dotson*, 41 ECAB 754 (1990); *Allen C. Godfrey*, 37 ECAB 334 (1986); *Buck Green*, 37 ECAB 374 (1985).

<sup>4</sup> *Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

<sup>5</sup> *David F. Cianciolo*, 45 ECAB 731 (1994).

arising out of and in the course of employment.<sup>6</sup> Appellant has not presented any evidence to substantiate that she suffered from asthma attacks as a result of the details to various locations she performed while in the performance of duty. There is no factual or medical evidence in the record to substantiate this allegation; therefore, it is not compensable under the Act. In addition, appellant admitted that due to her increased anxiety over the alleged asthma attacks, she drove round trip to the assigned details as opposed to staying overnight as contemplated by the employing establishment. Thus, to the degree that she sustained stress due to driving round trip to the various locations when her employing establishment has provided the means for her to stay overnight at the various locations, her stress is self-generated. Furthermore, the central causative factor to appellant's claim was her reaction to a detail assignment given on October 19, 1995 which would require her to drive approximately 150 miles from her home. However, appellant's reaction in this case to a proposed assignment was due to her perceived fears about a possible future injury as appellant had not yet begun the detail or sustained any conditions as a result of performing the duties involved in that assignment. The fear of future injury is not compensable under the Act.<sup>7</sup> Therefore, appellant has not established any compensable factor of employment as an identified causative factor of her emotional condition and has not discharged her burden of proof.

The decision of the Office of Workers' Compensation Programs dated January 10, 1996 is hereby affirmed.

Dated, Washington, D.C.  
October 27, 1998

David S. Gerson  
Member

Michael E. Groom  
Alternate Member

Bradley T. Knott  
Alternate Member

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<sup>6</sup> *Joel Parker, Sr.*, 43 ECAB 220 (1991).

<sup>7</sup> *Louise G. Malloy*, 45 ECAB 613 (1994); *Mary A. Geary*, 43 ECAB 300 (1991).